

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

James Allan Gunnells,)	Civil Action No. 8:14-1978-MGL
)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
Jonathan Goodman, Officer Dillman, James)	
Jenkins, Ms. Sharon Paterson)	
)	
Defendants.)	

Plaintiff James Allan Gunnells, (“Plaintiff”), an inmate proceeding *pro se* and *in forma pauperis*, filed the instant action pursuant to 42 U.S.C. § 1983. (ECF No. 1). In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2), D.S.C., this matter was referred to United States Magistrate Judge Jacquelyn D. Austin for pre-trial handling. On June 23, 2015, the Magistrate Judge issued a Report and Recommendation, (“the Report”), (ECF No. 39), recommending that this Court deny without prejudice and with leave to re-file Defendants’ Motion for Summary Judgment. (ECF No. 24). Objections to the Report were due by July 10, 2015. Although no party filed any objection to the Report, Defendants did submit a filing in the nature of a reply. (ECF No. 42). The matter is now ripe for review by this Court.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28

U.S.C. § 636(b). In the absence of a timely filed Objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

Applying the above standards to the instant matter, the Court has carefully reviewed the record, applicable law, and the Magistrate Judge’s Report, (ECF No. 39), and finding no clear error in the Report, the Court adopts and incorporates it by reference. Defendants’ Motion for Summary Judgment, (ECF No. 24), is thereby **DENIED** without prejudice and with leave to re-file. Defendants are directed to address in any subsequent filing the outstanding issues outlined by the Magistrate Judge on page 13 of the Report. Defendants may stand upon their already-filed Second Motion for Summary Judgment, (ECF No. 41), provided it addresses these issues. Alternatively, Defendants may re-file or supplement their motion as needed, provided they do so within 30 days of the date of entry of this Order. In that event, Plaintiff will be permitted the standard period of time to respond.

IT IS SO ORDERED.

s/Mary G. Lewis
United States District Judge

July 14, 2015
Columbia, South Carolina